IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL (St.) NO.5710 OF 2007

Shiv Bahadur Chandrashekar Shukla ...Appellant

V/s.

Municipal Corporation of Greater

Bombay, Mumbai & Ors. ...Respondents

Mr.M.S. Menon, Advocate, for the Appellant. .

Mr.J.J. Xavier, Advocate, for Respondent No.1. .

Mr.S.N. Gawade, AGP, for Respondent No.2 .

CORAM: S.K.SHAH,J.

DATE : 21st March, 2007.

P.C.

. The appellant shall get the Appeal registered within one week from today.

2. I have heard the learned counsels on both sides. I have perused the impugned order passed by the Judge of the City Civil Court. I have perused and considered all the documents which are produced alongwith the compilation filed in this Appeal. There is not a single document which proves the allegation of the appellant that he has been in the occupation of construction which is standing there since before 1962.

3. The judgement of the Trial Court is well reasoned having considered all the documents. The learned counsel for the appellant has made much with regard to the notice issued under section 354 which is produced alongwith the compilation. This notice however was not produced before the BMC authority for its consideration. That notice is dated 23.11.1995. The learned counsel for the respondents points out that such notice under section 354 is always issued by the Assistant Engineer (Building & Factory) at Ward level. He points out that the notice which is produced is issued by the Executive/Assistant Engineer, Division BMC. Therefore, he says that this notice is not genuine notice. Apart from this, this notice having not been produced before the BMC authority alongwith the reply to the notice, the same cannot be considered at this stage.

4. Moreover, in the cross-examination, the appellant-plaintiff had admitted that he did not obtain permission from BMC before constructing the suit structure which indicates that the structure was put up by him. It is his own case that he came in the premises much later than 1962. The compilation, therefore, indicates that the structure was put up much after 1962.

5. Another circumstance is that there is nothing to show that the structure occupied by the occupant is existing prior to 1962. Hence I do not find any merits in the Appeal. Hence it is dismissed.

(S.K.SHAH,J.)